



May 22, 2006

Holly Morris, Chair  
Community Preservation Committee  
Town Hall  
878 Tremont Street  
Duxbury, MA 02332-4499

Re: Community Preservation Fund  
Our File No. 2006-177

Dear Ms. Morris:

This is in response to your letter asking whether certain revenues derived from the use of land acquired with Community Preservation Act (CPA) monies belong to the community preservation fund. Specifically, you asked about rent received from a grower who is leasing a cranberry bog and proceeds from the sales of trees grown on a tree farm. Both properties were acquired with fund monies and are managed by the Conservation Commission. In our opinion, the monies belong to the town's general fund.

As a general rule, all municipal revenues regardless of source belong to the general fund and are available for expenditure for any valid municipal purpose after appropriation by the municipality's legislative body. G.L. c. 44, §53. There are numerous statutes, however, that create exceptions to that general rule, *i.e.*, they segregate particular revenues from the general fund into a separate special revenue fund and dedicate those monies for particular spending purposes. The CPA creates such a special revenue fund, the community preservation fund, and credits the following revenues to it: (1) monies collected from the local surcharge, (2) proceeds from community preservation borrowings, (3) funds received from the Commonwealth or any other source for community preservation purposes, (4) proceeds from the disposal of real property acquired with community preservation funds, and (5) damages and penalties from persons who knowingly damage properties acquired with community preservation funds. G.L. c. 44B, §§7 and 15(c).

Neither the proceeds from the sale of trees or rental income from the bog come within these particular revenue items. The sale of severed trees, which are personal property, are not funds received for community preservation purposes, which we believe means gifts, grants or donations from the state or other public or private sources given to further community preservation programs. Also see, G.L. c. 44B, §14. Moreover, while a lease can be considered a disposition of real property in some instances, we think disposal for purposes of G.L. c. 44B, §7 means the sale of the fee interest of real property acquired with community preservation monies.

Holly Morris, Chair  
Community Preservation Committee  
Town of Duxbury  
Page Two

First, the section applies to the disposition of "real property," rather than real property or any interest therein. In addition, proceeds from the sale of municipal real property are not general revenue, but are credited to a separate fund for use for capital purposes. G.L. c. 44, §63. This provision seems intended to similarly restrict the proceeds from the sale of these properties, but for other community preservation purposes instead.

If you have any further questions, please do not hesitate to contact me again.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Kathleen Colleary, Chief  
Bureau of Municipal Finance Law

KC